

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

HOSPITAL MENONITA DE GUAYAMA, INC. and UNIDAD LABORAL DE ENFERMERAS(OS)Y EMPLEADOS DE LA SALUD	Cases: 12-CA-214830, 12-CA-214908, 12-CA-215040, 12-CA-215039, 12-CA-215665, 12-CA-217862, 12-CA-218260, 12-CA-221108
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**MOTION IN OPPOSITION TO MOTION OF THE ACTING GENERAL
COUNSEL TO THE NATIONAL LABOR RELATION BOARD FOR LEAVE TO
WITHDRAW PORTIONS OF THE FORMER GENERAL COUNSEL’S
BRIEFS TO THE BOARD**

TO THE HONORABLE BOARD:

COMES NOW, Hospital Menonita de Guayama, Inc., (“the Hospital and/or Respondent”), through its undersigned attorney, and respectfully submits the present Motion for the consideration of this Honorable Board as follows:

1. On March 1, 2021 Counsel for Acting General Counsel filed a motion requesting that this Honorable Board permits the withdrawal of the argument presented by then former General Counsel Peter Robb, in the Answering Brief to Respondent’s Exceptions and Brief in Support of Cross-Exception that were filed by General Counsel on September 23, 2019 urging

the Board to overrule UGL-UNICCO Service Company, 357 NLRB 801(2011) and return to the Rule of MT Transportation 337 NLRB 770 (2002).

2. Respondent opposes the request of Counsel for Acting General Counsel, Peter Sung Ohr, in view of the following:

- a. Respondent's Reply Brief to Counsel for the General Counsel's Answering Brief to Respondent's Exceptions filed on October 7 2019, was predicated on the fact that then General Counsel Robb, was also in agreement with our view that this Honorable Board should overrule UGL-UNICCO, *supra* and return to the Rule of MV Transportation, *supra*.
- b. The present case has been submitted for decision since November 6, 2019 and Respondents due process would be affected if Counsel for Acting General Counsel request is granted since the legal major issue in the present case is precisely the successor bar doctrine and our arguments in our reply brief were predicated in General Counsel Robb statements that now acting General Counsel request to withdraw.
- c. Acting General Counsel at the present time is unable to request the withdrawal because he "disagrees with the recommendation to overturn existing Board Law..." made by then General Counsel, Robb. General Counsel, Robb term of office expires on November, 2021. It is our view that President

Biden unlawfully terminated Robb as General Counsel for reasons other than those set forth in Section 3(a) of the NLRA. The position of General Counsel is equivalent to that of the members of this Honorable Board and therefore Section 3(a) of the Act applies. In view of the above, the Acting General Counsel has no legal authority to make such a request or prosecute violations of the Act.

Under Section 3(d) of the NLRB, the General Counsel of the Board is “appointed by the President by and with the advice and consent of the Senate, for a term of four years”. In accordance with Section 3(a) of the Act “any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause”.

The delegated responsibilities to the position of General Counsel clearly demonstrate that said position is equivalent to that of a member of this Honorable Board. Therefore, said position is also subject to the removal provision. Otherwise, the independence of the Board would be jeopardized.

Even without considering the provision established by section 3(a) of the Act, the creation under Section 3(d) of a four-year term as well as the absence of language providing that the

position serves at the pleasure of the President demonstrates the existence of a for cause termination requirement.

The legislative history of the Act supports the above statement. NLRB, Legislative History of the Labor-Management Relations Act, 1947, at 1567 (1948). There is no doubt that Congress intended to provide the General Counsel of the Board the assurance of completing his term of office without risk of being removed by the President prior to the end of the term.

Since General Counsel Robb was unlawfully removed from office any action taken in the prosecution of any unfair labor practice by the Acting General Counsel or the office of the General Counsel during the remainder of his term is *ultra vires* or without legal authority.

d. Under present circumstances any action taken by Acting General Counsel in the prosecution of unfair labor practices and specifically in this case, the request for withdrawal of a portion of the briefs in view of his disagreement with the prior General Counsel should not be considered by this Honorable Board.

e. The circumstances surrounding the unlawful removal from his position of General Counsel Robb create a risk that if the request of the Counsel for the Acting General Counsel is

granted, said action could cause the re-litigation of the case since Acting General Counsel actions could be declared void and without legal effect.

WHEREFORE, it is respectfully requested that this Honorable Board takes note of the above and denies the request presented in the motion filed by Counsel for the Acting General Counsel.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 4th day of March of 2021.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion in Opposition to Motion Of The Acting General Counsel To The National Labor Relation Board For Leave To Withdraw Portions Of The Former General Counsel's Brief to the Board was electronically filed with the Executive Secretary of the National Labor Relation Board and served by electronic mail upon the below listed parties on this 4th day of March 2021 as follows:

By Electronic filing to:

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